

**CITY OF NEWARK
DELAWARE**

PLANNING AND DEVELOPMENT DEPARTMENT

April 26, 2011

TO: Mayor and Members of Council

VIA: Kyle R. Sonnenberg, City Manager *RS*

FROM: Roy H. Lopata, Planning and Development Director *RH Lopata*

RE: Unicity Bus Service for State Fiscal Year 2011-2012

I have attached for Council's review and approval the proposed Unicity Bus Service Agreement between the Delaware Transit Corporation and the City of Newark and the companion agreement between the City and the University of Delaware for the continuation of Unicity bus service for the State Fiscal Year beginning July 1, 2011. Please note that the amount of funding allocated in the agreement has been left blank until such time as the General Assembly approves the City's budgetary request through the State process, which concludes on June 30th. We will insert the appropriate number prior to the signing of the agreement.

Council authorization of the signing of the required Unicity Bus Agreements will be scheduled for the next available Council agenda.

If you have any questions, please let me know.

RHL/ed

Attachments

Cc: Dennis McFarland, Finance Director
William F. Fitzpatrick, UD Director of Supporting Services
Al Hillis, DelDOT

**UNICITY GRANT AGREEMENT
BETWEEN
DELAWARE TRANSIT CORPORATION
AND
CITY OF NEWARK**

THIS AGREEMENT, made and entered into this _____ day of July, 2011 by and between the Delaware Transportation Corporation; hereinafter referred to as DTC; and the City of Newark, hereinafter referred to as CITY.

WHEREAS, DTC is responsible for establishing an economical, efficient and unified system of air, water, vehicular, public and specialized transportation in the State; and

WHEREAS, pursuant to 2 Del. C. §1309(14) DTC has the express statutory authority to make grants or loans to any persons for any transportation purpose approved by DTC; and

WHEREAS, continued operation of UNICITY in an economical and efficient manner is desirable and DTC has approved a grant for said purpose;

NOW, THEREFORE, in consideration of the mutual benefits which will accrue to the parties hereto in carrying out the terms of this Agreement, it is mutually agrees as follows:

I. OBLIGATION OF FUNDS

DTC agrees to make a grant for the fiscal year beginning July 1, 2011 of \$_____ to be paid in quarterly payments to the CITY to fund the administration and operation of UNICITY, including Routes N-1, N-2, and N-3: quarterly payments shall be made by DTC to the CITY. The grant shall be used to pay operating expenses of the system such as labor charges, fuel and lubricants, vehicle maintenance, printing, advertisements and insurance. In no event will the total liability of the DTC under this Agreement exceed \$_____.

II. REPORTING REQUIREMENTS

The CITY shall submit to the Delaware Transit Corporation monthly financial data and operating statistics relating to the UNICITY service. Monthly data and operating statistics shall be provided by the CITY on a form provided by the DTC.

III. LEVELS OF SERVICE AND RIDERSHIP

The CITY shall maintain the following maximum levels of service and ridership for Route N-1, N-2, and N-3 during the grant period:

- A. 253 service days
- B. 12 service hours per service day
- C. 3400 service miles per month

IV. UNIFIED SYSTEM

The CITY shall coordinate UNICITY routes, schedules and its facilities with those of the Delaware Transit Corporation, including the Park and Ride facility at State Routes 4 and 896.

V. SERVICE CHANGES

In the event that service is significantly interrupted or reduced or that routes are terminated, as determined by DTC in its sole discretion, DTC shall reduce its future payments and the CITY shall reimburse DTC for past payments pro rata to the service change.

VI. TERMINATION OF THE PROGRAM

In the event that the CITY should terminate the operation of UNICITY, DTC shall terminate all future payments to the CITY under the terms of this Agreement. All final expenses shall be determined by audit. Upon termination of the operation of UNICITY, the CITY shall immediately notify DTC. Effective on the date of termination, the CITY shall not incur any additional obligations for UNICITY. Only obligations incurred up to the date of termination will be eligible for funding by DTC, subject to the limitations set forth in Section I (Obligation of Funds) of this Agreement. Within 60 days of termination, the CITY will present DTC with a final bill. Payment of this final bill shall be contingent upon an audit to verify total costs.

VII. AUDIT OF THE SERVICE

DTC shall arrange and pay for an annual audit of UNICITY operating statistics and financial data. The CITY shall permit an auditor named by DTC and the Auditor of Accounts to audit all books, records and pertinent data relating to UNICITY service. The CITY agrees that any funds received from DTC that are in excess of the total audited UNICITY operating expenses may, at DTC's option, be refunded by the CITY to DTC.

VIII. INDEPENDENT AGENT

The CITY is an independent contractor and this Agreement does not constitute DTC a partner, agent, assign, employee or the like of the CITY. The CITY is not a partner, agent, assign, employee or the like of DTC.

IX. INSURANCE

The CITY shall purchase and maintain adequate collision, comprehensive and liability insurance coverage on any equipment and operations that are funded under the terms of this Agreement. This coverage shall be in force for the entire duration of this Agreement. The CITY shall furnish DTC with a Certificate of Insurance from the carrier specifying the limits of coverage and the duration of coverage. The insurance carrier must provide DTC with a waiver of immunity endorsement stipulating that the insurance carrier will not decline to defend and protect the interest of DTC on the grounds of DTC's sovereign immunity to tort liability.

X. INDEMNIFICATION

The CITY in consideration for the payment under this Agreement, agrees to indemnify and hold harmless DTC, the Delaware Department of Transportation, the State of Delaware, its officers, and employees, for and against any and all loss, liability, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury or death of any and all persons or injury to any and all property, of any nature, arising out of the negligent acts or omissions of the CITY or pertaining to negligent work done pursuant to this Agreement, and particularly, but without limiting the foregoing, caused by, resulting from, or arising out of any negligent act or omission on the part of the CITY, and all damage, direct or indirect, of whatsoever nature, resulting from said negligent work, whether or not such work was inspected by, approved by, or accepted by DTC, its officers, and/or employees. Further, the CITY shall indemnify and hold harmless from and against any and all loss, liability, penalties, damages, expenses, attorney's fees, judgments and/or settlements which DTC, its officers and/or employees may suffer or pay as a result of claims or suits by any third persons against said DTC, its officers and/or employees seeking recovery for personal injury and/or death or injury to property whether such claims be based upon any breach of any statutory duty, administrative regulation (whether non-delegable or otherwise) or obligation on the part of DTC, its officers and/or employees, or otherwise which resulted from the CITY's negligent acts or omissions.

XI. TERMS

The term of this Agreement is July 1, 2011 through June 30, 2012.

CITY OF NEWARK

ATTEST:

Kyle R. Sonnenberg, City Manager

DELAWARE TRANSIT CORPORATION

ATTEST:

Stephen B. Kingsberry, Executive Director

City of Newark/University of Delaware UNICITY Bus System Agreement

I. Purpose

This agreement made this 1st day of June, 2011 between the University of Delaware (herein referred to as the "University") and the City of Newark, Delaware (herein referred to as the "city"), is intended to provide a transit system (herein referred to as the "Unicity") for the residents of the Newark area.

Now, therefore, in consideration of the mutual benefits which will accrue to the parties hereto in carrying out the terms of the agreement, it is mutually agreed as follows:

II. Obligations of the University

The University shall administer and operate Unicity as more specifically detailed in attachments numbered 1, 2 and 4. To this end, the University shall:

- (a) Employ and supervise suitable properly licensed and insurable drivers in sufficient number to operate Unicity buses pursuant to the schedules fixed by this agreement;
- (b) Pay the bus drivers their wages, provide usual employee benefits and pay whatever other costs which may be entailed in or occasioned by the employment of such drivers;
- (c) Maintain and administer all aspects of the employment of the bus drivers including administration of all tax withholding and other withholdings as may be required by law;
- (d) Maintain workmen's compensation insurance with respect to all bus drivers;
- (e) Upon request, provide to the City driving records of the Unicity bus operators;
- (f) See to the storage and safekeeping of the buses;
- (g) Perform all necessary bookkeeping and accounting, and maintain records of Unicity as requested or required by the City;
- (h) Keep an up to date vehicle condition record located on each bus to be maintained by the drivers;
- (i) Provide a loaner bus if needed and if available;
- (j) Provide telephone information service for the general public to answer service inquiries. Information provided will be coordinated with the City.

III. Obligations of the City

The City shall:

- (a) Provide the number of buses funded by the Delaware Department of Transportation for the Operation of the Unicity bus system and make every effort to keep said buses safe and in good working condition;
- (b) Provide proper maintenance for all buses including but not limited to work requested by the University on written work orders;
- (c) Provide everything needed for the proper routine operation of the buses including but not limited to fuel and oil;
- (d) Ensure that persons performing maintenance work on the buses are qualified under all applicable State and Federal laws;
- (e) Provide copies of the maintenance records for each bus for inspection by a representative of the University at the City's facilities;
- (f) Reimburse the University promptly on receipt of statements from the University all costs and expenses incurred by the University pursuant to its compliance with this agreement including but not limited to all monies expended to or on behalf of the bus operators pursuant to this agreement, administrative expenses, and the cost of workmen's compensation insurance;
- (g) Secure licenses, permits and similar certificates as necessary for the operation of Unicity;
- (h) Be fully responsible for all Unicity bus system administration, including determination of service suspension during weather emergencies in consultation with the University;
- (i) Design and administer routes and route schedules in consultation with the University;
- (j) Design and print all Unicity Bus Schedules;
- (k) Provide telephone information service for the general public to answer service inquiries. Information provided will be coordinated with the University.

IV. Payment Schedules

- (a) The City shall make monthly payments to the University, upon-receipt of a monthly account statement. See attachment number 3, Payment/Rate Schedule;
- (b) "Administrative expenses" shall be calculated by the University based on a percentage of the amount charged for the salary of the bus drivers referred to above and their benefits. See attachment number 3, Payment/Rates Schedule;

- (c) A charge based on a per hour fee shall be made by the University for each loaner bus provided by the University if the use of such bus exceeds four hours per day.

V. Insurance

The City shall provide proof of insurance to the University Purchasing Dept., General Services Building, 222 South Chapel Street, Newark, DE 19716, at least ten days before the University begins performance of its obligations under the agreement. The City shall provide proof of renewal of such insurance or of replacement insurance ten days before the expiration of the policy period for the prior proof of insurance. The insurance provided by the City shall be motor vehicle liability insurance with a combined single limit of coverage of at least \$5 million per accident and comprehensive general liability insurance with a combined single limit of at least \$5 million. The University and its agents shall be a named insured on all such policies.

The insurance coverage required shall be written by an insurance company licensed to do business in the State of Delaware and duly registered with the State's Department of Insurance.

VI. Indemnification

The University and the City mutually agree that each shall indemnify, defend and hold harmless the other and its officers, agents and employees from any damages, liability, including reasonable litigation expenses, if such damages, liability and litigation expenses comes into being as a result of its failure to perform properly its responsibilities under this agreement or as a result of the negligence and/or willful misconduct of its officers, agents or employees. In the event that loss, damage, expense, liability, etc. is a result of the breach of this agreement by failure to perform the responsibilities and duties set forth in this agreement under this agreement by both parties to it or as a result of the negligence of the officers, agents or employees of both parties, then there shall be no duty to indemnify except as may be established by law. In the event of litigation, the duty to indemnify and hold harmless if any shall be determined by the courts. Neither party will be liable for any expenses incurred or payments made by the other or its agents prior to the time the handling of any potential or actual loss, damage or expense or any claim or suit against it or its agents is tendered to the part responsible for indemnification unless agreed upon in writing by the parties hereto.

VII. General Provisions

Unicity bus services shall be provided pursuant to the following:

A. Rate Structure:

- (1) No fare will be charged passengers using Unicity.

B. Operational Guidelines:

- (1) Areas of Operation – see attachment numbered 1:
 - (a) Newark Loop – Route N-1
 - (b) Commuter Routes – Route N-2, Route N-3
- (2) Hours of operation – see attachment numbered 2;
- (3) Service standards – see attachment numbered 4;
- (4) All State and Federal regulations apply.

VIII. Contract Administration

In all matters pertaining to the interpretation of this agreement and resolution of issues that arise pursuant to its Planning Director, of the City of Newark, will be the person responsible for acting on behalf of the City and Associate Vice President for Administrative Services, will be the person responsible for acting on behalf of the University.

IX. Resolution of this Agreement

In the event the parties are unable to resolve any disagreements they may have about any aspect of this agreement or the duties of the parties pursuant to it, the parties shall first make reasonable efforts to resolve the disagreement amicably.

If the parties are unable to do so, they may choose to submit the dispute to mutually agreed upon arbitration. In all instances, the terms and conditions of this agreement shall be interpreted under the laws of the State of Delaware.

X. Duration of this Agreement and Termination

This agreement is effective as of the 1st day of June, 2011. It shall continue in effect from year to year from the effective day unless either party gives written notice to the other 30 days prior to the anniversary date of its intention not to renew.

In the event that either party fails to comply with the terms of this agreement, the other party shall notify the non-complying party in writing. If the non-complying party fails to rectify the non-compliance within a reasonable time, the other party shall have the right to terminate the agreement.

XI. Entire Contract

This agreement constitutes the entire agreement and includes attachments numbered 1, 2, 3, and 4. This agreement supersedes and terminates any other contract or agreement between the University and the City with reference to Unicity.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year above written.

UNIVERSITY OF DELAWARE

By: _____

Witness

CITY OF NEWARK

By: _____

Witness

Attachment #1 (a schedule and map of current Unicity operation)

Attachment #2

HOURS OF OPERATION

Route "N-1"	8:51am – 4:15pm	
Route "N-2"	7:20am – 7:59am	5:12pm – 5:54pm
Route "N-3"	7:20am – 8:51am	4:17pm – 5:40pm

Attachment #3

PAYMENT/RATE SCHEDULES

1. The maximum hourly rate for drivers including benefits will be \$72.00
2. "Administrative expenses" shall be calculated at 12 percent of the amount charged for the salary of the bus drivers and their benefits.
3. Administrative fee of \$20.00 per hour shall be charged, per loaner bus, if replacement exceeds four continuous operating hours.

Attachment #4

SERVICE STANDARDS:

1. Route Layout:

The buses will follow the Route Layout in attachment 1 until the City provides a substitute attachment 1 clearly designated as such. If in the judgment of either the University or the City or both it is not desirable for any bus to follow any of the routes designated on attachment 1, the routes may be varies in such manner and for such time as may be mutually agreed by the parties.

2. Frequency of Service:

1. No service will be provided on major holidays or weekends. Major holidays include: New Year's Day, Memorial Day, Independence Day, Labor Day, and Christmas Day. Normal weekday schedules will be followed on other holidays like Washington's Birthday, Election Day and Martin Luther King Day, etc.

3. Bus Stops:

1. Bus stops shall be established which are convenient to the passengers, minimize traffic congestion, and improve adherence to the bus schedule.

2. Bus stop signs, curb and pavement markings should be used when necessary as determined by the City (for reference consult "A Recommended Practice for Proper Location of Bus Stops," Institute of Transportation Engineers, Arlington, Virginia, 1967).

4. Operating Performance Adherence

1. **Schedule Adherence**

- A. "Leave" times for the starting points of routes shall be followed exactly
- B. Under no circumstances shall the route trip begin before scheduled "leave" times.
- C. "On-time" performance, which is typically defined as 0 to 5 minutes late (but never early), should be checked on a regular basis. A minimum of 95% of the service should be on time.

2. **Load Factor**

The possibility of additional service should be investigated if riders are found to be standing for more than ten minutes per route per day.

3. **Safety and Security**

- A. The frequency of passenger accidents should not exceed one accident per 200,000 passengers carried.
- B. All accidents shall be analyzed to determine possible remedial action.

4. **Passenger Amenities**

- A. Every vehicle shall have an operable heating system in working condition.
- B. Buses shall be cleaned inside each day and outside on a schedule not less than once every month.

5. **Bus Identification**

- A. Every bus shall be marked appropriately with a route number.
- B. Every bus shall be marked appropriately with signs indicating route termination location.